In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 10094 of 1995

Date of Decision: September 6, 2006

Apar Singh

…Petitioner

Versus

Union of India & others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

PRESENT: Mr. Bhim Sen Sehgal, Advocate, with
Mr. Rajesh Sehgal, Advocate,
for the petitioner.

Mr. Kamal Sehgal, Senior Panel Counsel, with
Mr. S.K. Sharma, Central Government Counsel,
for the respondents.

JUDGMENT

M.M. KUMAR, J.

This petition filed under Article 226 of the Constitution prays for issuance of a writ in the nature of certiorari quashing order dated 29.6.1995 (P-4) rejecting the claim for disability pension as well as claim for service element of his pension. A further prayer has been made to direct the respondents to grant disability pension to the petitioner from 14.3.1977 onwards with all consequential reliefs along with interest at the rate of 18% per annum. In the alternative it has been prayed that petitioner be granted service element of disability pension from 14.3.1977 onwards for life with consequential reliefs.

Few facts may first be noticed. The petitioner was enrolled in the Army on 24.8.1949. He was invalided out of military service on 5.10.1956 on medical grounds i.e. due to the disease of 'Pulmonary Tuberculosis'. The disease of the petitioner was held to be attributable to military service and at the time of invalidation the disability was assessed as 100% by the Medical Board. The petitioner at that time had rendered 7 years 1 month and 12 days service. He was granted disability pension consisting of service element and disability element from 6.10.1956 to 13.3.1977. Thereafter the disability pension of the petitioner was not extended as the disability percentage of the petitioner was assessed at less than 20%. The respondents also stopped the service element of disability pension of the petitioner w.e.f. 14.3.1977. The petitioner represented the respondents for grant of service element of disability pension on the ground that his original pension was comprised of service element also. Despite protracted correspondence the respondents have not released the service element of pension to the petitioner.

In the written statement the respondents have taken the stand that since the disability pension of the petitioner was discontinued w.e.f. 15.3.1977 as his disability was assessed at less than 20% and his total army service is less than 10 years, therefore, the petitioner cannot claim that relief. However, it has not been denied that the disability of the petitioner was not attributable to or aggravated by military service.

Controverting the assertions made in the written statement, the petitioner filed replication by reiterating the averments made in the writ petition.

At the hearing, learned counsel for the petitioner has confined his claim only to the grant of service element of disability pension w.e.f. 14.3.1977.

(M.M. KUMAR)
JUDGE

September 6, 2006
Pkapoor